

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

2014 DEC -2 AM 11:16

SOUTHERN DISTRICT
OF INDIANA
LAUREN A. BRISKEY
CLERK

3:14-cv-0164 RLY-WGH

Cause No.: _____

RITA KUNZ and HERMAN KUNZ,)
Plaintiffs,)
vs.)
EVANSVILLE SURGICAL)
ASSOCIATES, INC. and)
ROGER S. SHINNERL, M.D.,)
Defendants.)

COMPLAINT FOR DAMAGES

Plaintiffs, Rita Kunz and Herman Kunz, by counsel, for their Complaint for Damages against the Defendants, Evansville Surgical Associates, Inc., and Roger S. Shinnerl, M.D., allege and state as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiffs, Rita Kunz and Herman Kunz, reside in the City of Sandwich, County of LaSalle, State of Illinois and are therefore citizens of the State of Illinois.
2. Defendant, Evansville Surgical Associates, Inc. ("ESA") is an Indiana corporation with its principal place of business located at 250 Mary Street, Evansville, County of Vanderburgh, State of Indiana 47710 and therefore is a citizen of the State of Indiana.
3. Defendant, Robert S. Shinnerl, M.D. ("Dr. Shinnerl") resides in the City of Newburgh, County of Warrick, State of Indiana, and is therefore a citizen of the State of Indiana.
4. At all relevant times herein, Defendant Dr. Shinnerl was an agent and employee of ESA, and was acting in the course and scope of his employment with ESA.

5. Diversity jurisdiction exists in this matter pursuant to 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds seventy-five thousand dollars (\$75,000).

6. Venue is proper within this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to this action occurred in this district.

GENERAL ALLEGATIONS

1. On or about September 14, 2011, Rita Kunz underwent a right thoracotomy with resection of two esophageal diverticula, for which procedure Dr. Shinnerl was the surgeon.

2. Post-operatively, Rita Kunz experienced leak from the stapled esophageal diverticula and perforation of the lower diverticulum resection, for which she underwent a repeat thoracotomy by Dr. Shinnerl. Rita Kunz developed sepsis and a gastrostomy tube and jejunostomy tube were placed during the repeat thoracotomy.

3. Rita Kunz was transferred to the University of Chicago Medical Center, where she eventually underwent removal of much of her esophagus with subsequent reconstruction.

4. The medical and surgical care rendered by Defendants, ESA and Dr. Shinnerl, by and through its agents and employees, was negligent and below the appropriate standard of care in one (1) or more of the following respects:

- a. Failure to provide appropriate conservative treatment for esophageal diverticula;
- b. Failure to appropriately advise Rita Kunz of the nature of the proposed surgery, its risks, and reasonable, more conservative alternatives;
- c. Failure to utilize appropriate surgical skill, care, and technique;
- d. Failure to provide appropriate follow-up treatment and care; and,

e. Ultimately, failure to properly manage and repair Rita Kunz's esophageal diverticulitis.

5. As a direct and proximate result of the above-referenced negligence of the Defendants, Plaintiff, Rita Kunz, has endured a tortuous and prolonged course of recovery, including an extended stay at a rehabilitation facility, went months without the ability to eat, has endured numerous surgical procedures, continues to suffer and endure physical and emotional pain and depression, and has incurred substantial medical expenses and other damages.

6. As a further direct and proximate result of the above-referenced negligence of the Defendants, Plaintiff, Herman Kunz, has lost the services and consortium of his spouse, has incurred substantial medical expenses, and has provided gratuitous medical care for his spouse.

WHEREFORE, the Plaintiffs, Rita Kunz and Herman Kunz, pray for damages against the Defendants, Evansville Surgical Associates, Inc., and Roger S. Shinnerl, M.D., in a fair and reasonable amount which will fully and fairly compensate the Plaintiffs for their injuries, for the costs of this action, for interest as allowed by law, and for all other relief just and proper in the premises.

Respectfully submitted,

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